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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	<b>Application Number</b>	09/464,416	
	<b>Filing Date</b>	December 16, 1999	
	<b>First Named Inventor</b>	Yasmin Thanavala	
	<b>Group Art Unit</b>	1651	
	<b>Examiner Name</b>	M. Flood	
<b>Total Number of Pages in This Submission</b>	4	<b>Attorney Docket Number</b>	RPP:156B US

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
<div>Remarks</div>		

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm or Individual name	Michael L. Dunn Dunn & Associates		
Signature			
Date	Nov. 5, 2001		
CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: Nov 5, 2001			
Typed or printed name	Michael L. Dunn		
Signature		Date	11/5/2001

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**FEE TRANSMITTAL**  
**for FY 2001**

JAN 22 2002

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT (\$)

## Complete if Known

Application Number	09/464,416
Filing Date	December 16, 1998
First Named Inventor	Yasmin Thanavala
Examiner Name	M. Flood
Group Art Unit	1651
Attorney Docket No.	RPP:156B US

## METHOD OF PAYMENT

- 1.
- ☐
- The Commissioner is hereby authorized to charge indicated fees and credit any overpayment to:

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Account  
Number

04-1790

Deposit  
Account  
NameCharge Any Additional Fee Required  
Under 37 CFR 1.16, 1.17, 1.18 and 1.20Applicant claims small entity status.  
See 37 CFR 1.27

- 2.
- ☐



Check



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Money Order



Other

## FEE CALCULATION

## 1. BASIC FILING FEE

Large Entity Fee Code	Small Entity Fee Code	Fee (\$)	Fee (\$)	Fee Description
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101	710	201	355	Utility filing fee
106	320	206	160	Design filing fee
107	490	207	245	Plant filing fee
108	710	208	355	Reissue filing fee
114	150	214	75	Provisional filing fee

Fee Paid

SUBTOTAL (1)

(\$)

## 2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from below	Fee Paid
<input type="text"/>	-20** = <input type="text"/>	X <input type="text"/>	= <input type="text"/>
Independent Claims	-3** = <input type="text"/>	X <input type="text"/>	= <input type="text"/>
Multiple Dependent		<input type="text"/>	= <input type="text"/>

Large Entity Fee Code	Small Entity Fee Code	Fee (\$)	Fee (\$)	Fee Description
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103	18	203	9	Claims in excess of 20
102	80	202	40	Independent claims in excess of 3
104	270	204	135	Multiple dependent claim, if not paid
109	80	209	40	**Reissue independent claims over original patent
110	18	210	9	**Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$)

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

## 3. ADDITIONAL FEES

Large Entity Fee Code	Small Entity Fee Code	Fee (\$)	Fee (\$)	Fee Description	Fee Paid
105	130	205	65	Surcharge - late filing fee or oath	
127	50	227	25	Surcharge - late provisional filing fee or cover sheet	
139	130	139	130	Non-English specification	
147	2,520	147	2,520	For filing a request for ex parte reexamination	
112	920*	112	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	113	1,840*	Requesting publication of SIR after Examination action	
115	110	215	55	Extension for reply within first month	
116	390	216	195	Extension for reply within second month	
117	890	217	445	Extension for reply within third month	
118	1,390	218	695	Extension for reply within fourth month	
128	1,890	228	945	Extension for reply within fifth month	
119	310	219	155	Notice of Appeal	
120	310	220	155	Filing a brief in support of an appeal	
121	270	221	135	Request for oral hearing	
138	1,510	138	1,510	Petition to institute a public use proceeding	
140	110	240	55	Petition to revive - unavoidable	
141	1,240	241	620	Petition to revive - unintentional	
142	1,240	242	620	Utility issue fee (or reissue)	
143	440	243	220	Design issue fee	
144	600	244	300	Plant issue fee	
122	130	122	130	Petitions to the Commissioner	
123	50	123	50	Processing fee under 37 CFR 1.17(q)	
126	180	126	180	Submission of Information Disclosure Stmt	
581	40	581	40	Recording each patent assignment per property (times number of properties)	
146	710	246	355	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	710	249	355	For each additional invention to be examined (37 CFR § 1.129(b))	
179	710	279	355	Request for Continued Examination (RCE)	
169	900	169	900	Request for expedited examination of a design application	
Other fee (specify)					

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3)

(\$)

## SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Michael L. Dunn	Registration No. (Attorney/Agent)	25,330	Telephone	716-433-1661
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Signature

Date

11/05/01

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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants: Yasmin Thanavala, et al.

Art Unit: 1651

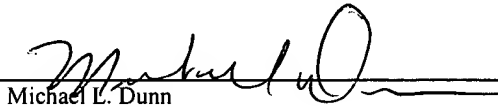
Serial No: 09/464,416

Filed: December 16, 1999

Examiner: M. Flood

For: ORAL IMMUNOLOGY USING  
PLANT PRODUCT CONTAINING  
CONTAINING A NON- ENTERIC  
PATHOGEN ANTIGEN

I certify that this **Reply Brief** is being deposited on  
**November 5, 2001** with the U.S. Postal Service as first class  
mail addressed to the Assistant Commissioner for Patents,  
Washington, D.C. 20231

  
Michael L. Dunn

Registration No. 25,330

**REPLY BRIEF**

Box AF  
Assistant Commissioner for Patents  
Washington, DC 20231

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Sir:

The attorney for the Appellants considers that most arguments showing patentability of the claims have already been set forth in the Appeal Brief.

We do, however, wish to point out the Examiner's rejections are inconsistent on their face.

In attempting to support the art rejection under 35 USC 103, the Examiner on page 10 of the Answer says:

"Thus, one would have had a reasonable expectation of success to provide a therapeutic regimen such as the one in the claimed invention because the determination of an effective treatment method for providing an immune response by the oral ingestion of the claim-designated drug in combination with an orally effective adjuvant in an individual which was greater than the response elicited by the NEPA alone would have been a matter of routine optimization to one of ordinary skill in the art at the time the invention was made."

This statement (admission) is made by the Examiner based upon the Examiner's view of the cited art alone without consideration of the teachings in the current specification which is the only true teaching and suggestion of "a method for providing a specific immune response by feeding a mammal with genetically altered potato expressing a NEPA with an adjuvant", (see Examiner's Answer page 8, lines 13-16).

The Examiner's statement on page 10 of the Examiner's Answer is completely inconsistent with the statement by the Examiner on page 5 used to support the Examiner's 35 USC 112 rejection, i.e., "However, the specification does not provide sufficient guidance as to how one of ordinary skill in the art would provide an immune response in a mammal and/or a human to a NEPA other than the non-enteric pathogen antigen, hepatitis B surface antigen."

The Examiner's Answer thus says on page 10 that the state of the art alone is sufficient to reduce the claimed invention to practice as "a matter of routine optimization", but the added detail and specific teachings of the specification to the known state of the art somehow "does not provide sufficient guidance". The inconsistency is clear.

Both the 35 USC 112 and 35 USC 103 rejections should be reversed and the claims should be allowed.

Dated: November 5, 2001

MLD/cah

Respectfully submitted,



Michael L. Dunn

Attorney for Applicant(s)

Reg. No. 25,330

P.O. Box 10

Newfane, New York 14108

Telephone: (716) 433-1661